

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
CIVIL REVISION APPLICATION No 1141 of 1995
For Approval and Signature:

Hon'ble MR.JUSTICE M.H.KADRI

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

YOGESH DAVID MASTER

Versus

OLIVIA S.KYTE

Appearance:

MR DC DAVE for Petitioner

MR MAHESH R RAVAL for Respondent No. 1

CORAM : MR.JUSTICE M.H.KADRI

Date of decision: 17/10/96

ORAL JUDGEMENT

This Civil Revision Application is directed by the original petitioner-husband against the judgment and order dated 22nd November 1994, passed by the learned Assistant Judge, Nadiad, below Application Exh.12, in Marriage Petition No. 2 of 1990, whereby the learned Judge rejected the petitioner's application for a decree of divorce under Order 12 Rule 6 of the Code of Civil Procedure ('the Code' for short).

Few facts which led to filing of this Civil Revision are summarised as under:

The marriage between the petitioner and Olivia S. Kyte (respondent herein) took place on 19th December 1985 in the Church of God of Prophecy, Gujarat State, Ahmedabad, as both are Christian by religion. At the time of marriage, the respondent declared on oath her

marital status as a 'divorcee' and was noted in the certificate of marriage accordingly. The marriage ceremony was performed by Rev.R.S. Parmar in the presence of the relatives of both the parties and was solemnized as per the Christian religion. Soon after the marriage, the petitioner and the respondent stayed at Vallabh Vidyanagar as husband and wife. After a short time, the petitioner went to the USA. In the USA, the petitioner came to know that the respondent had suppressed true facts before him that she had not obtained divorce from her former husband Wilfred Samuel Christian at the time of marriage with the petitioner. On coming to know about these facts, the petitioner enquired in detail and found that after the marriage of the petitioner and the respondent, the respondent had filed Marriage Petition No. 46 of 1986 on 10th February 1986 in the City Civil Court, at Ahmedabad and a decree of divorce was passed on 24th September 1986 subject to the confirmation by the appropriate forum as per the provisions of Section 17 of the Indian Divorce Act ('the Act' for short). On collecting the above facts, the petitioner served a notice to the respondent on 8th May 1987 and asked her explanation, but a false reply was given that at the time of marriage with the petitioner, the respondent was a divorcee. Thus, at the time of marriage, the respondent was a married wife and was not a divorcee and, in spite of this fact, she had declared on oath that she was a divorcee. The petitioner, therefore, filed Marriage Petition No. 2 of 1990 in the District Court, Kheda at Nadiad, for divorce on the ground of nullity of marriage under Section 18 read with Section 19 of the Act.

The respondent filed her written statement Exh.9, wherein, in paragraph 22, it was submitted by the respondent as under:

"In order to avoid further litigation the respondent admits the prayer A made by the petitioner in the petition para 17 and further agrees that the alleged marriage was solemnised on 19th December 1985 with this petitioner be declared as null and void. The respondent has no objection if the prayer as prayed for by the petitioner in prayer A in the petition is granted by the Court. The respondent is not liable to pay any costs as prayed for by the petitioner."

On the basis of this admission on the part of the respondent in her written statement Exh.9, the petitioner filed application Exh.12 in Marriage Petition No. 2 of 1990 praying that a decree for divorce be granted in pursuance of admission in writing made by the respondent

under Order XII Rule 6 of the Code.

That application came to be heard by the learned Assistant Judge, Kheda at Nadiad, who, by his judgment and order dated 22nd November 1995, rejected the same. The petitioner filed this revision challenging the aforesaid order.

Section 45 of the Indian Divorce Act, 1869 provides that the provisions of the Code of Civil Procedure shall be applicable to the proceedings under the Indian Divorce Act, 1869. The respondent in her written statement Exh.9 had clearly admitted that she has no objection if the decree for divorce was passed. In order to verify the veracity of the statement made by the respondent in her written statement Exh.9, she was summoned by this Court and she was specifically asked whether the averments made in the written statement are true or not. The respondent, who is present today in the court, and identified by learned advocate Mr. P.D. Dave appearing for Mr. Mahesh Raval on her behalf, in unequivocal terms admitted the averments made in the written statement and she has no objection if the decree for divorce as prayed for by the petitioner is passed. Order XII Rule 6 of the Code clearly provides that where admissions of fact have been made either in the pleading or otherwise, whether orally or in writing, the Court may at any stage of the suit, either on the application of any party or of its own motion and without waiting for the determination of any other question between the parties, make such order or give such judgment as it may think fit, having regard to such admissions.

The learned trial Judge was misdirected by the averments made by the respondent-wife in paragraphs 11 and 12 of the written statement (Ex.9) that she has denied the factum of marriage between her and the petitioner on 19th December 1985 and that she had declared herself as divorcee on the date of the marriage. If the averments in paragraph 22 of her written statement are appreciated in their true perspective, she has in no uncertain terms admitted that the marriage had taken place on 19th December 1985 between she and the petitioner and the same may be declared null and void. The fact that she invited decree for divorce on the ground that the marriage is null and void itself suggests that she was not a divorcee at the time of marriage with the petitioner. Therefore, in my view, the learned trial Judge has exercised his jurisdiction with material irregularity. If admission in paragraph 22 of the written statement is read minutely, then there is no

other alternative left to the court but to pass a decree for divorce on her admission and as prayed for by the petitioner-husband.

In the result, this Civil Revision Application is allowed. The judgment and order dated 22nd November 1994, passed by the learned Assistant Judge, Nadiad, below Application Exh.12, in Marriage Petition No. 2 of 1990, is quashed and set aside. The District Court, Kheda at Nadiad, is directed to draw decree for divorce in terms of prayer made by the petitioner in Marriage Petition No. 2 of 1990 on the basis of admission made by the respondent in paragraph 22 of her written statement Exh.9. Rule is made absolute with no order as to costs.

(swamy)